

[illegible]

JURY TRIAL DEMANDED

(Dkt. No. 373) entered in Civil Action No. 2:19-cv-00071-JRG-RSP, (iii) the Jury Verdict (Dkt. Nos. 264 and 265) entered in Civil Action No. 2:19-cv-00237-JRG-RSP, (iv) the Jury Verdict (Dkt. Nos. 274 and 275) entered in Civil Action No. 2:19-cv-00310-JRG-RSP, and (v) the Jury Verdict (Dkt. No. 257 and 258) entered in Civil Action No. 2:19-cv-00311-JRG-RSP.

Under Fed. R. Civ. P. 60(b), a district court has discretion to vacate a final judgment, order, or proceeding when “the judgment has been satisfied, released, or discharged,” “applying [the judgment] prospectively is no longer equitable” or “any other reason [] justifies relief.” Fed. R. Civ. P. 60(b)(5) and (6); *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 29 (1994) (finding that district court may vacate judgment under Fed. R. Civ. P. 60(b)); *see, e.g.,* Order, *Optis Wireless Technology, LLC, et al. v. Huawei Device USA, Inc., et al.*, Case No. 2:17-cv-00123-JRG, Dkt. No. 422 (E.D. Tex. Apr. 2, 2020) (granting joint motion to vacate final judgment pursuant to settlement) (Sacksteder Decl. Ex. A); Order, *Intellectual Ventures I LLC v. T Mobile USA, Inc., et al.*, Case No. 2:17-cv-00577-JRG, Dkt. No. 372 (E.D. Tex. June 24, 2019) (granting joint motion to vacate final judgment in light of settlement) (Sacksteder Decl. Ex. B); Order Granting Joint Motion To Vacate Final Judgment (Dkt. No. 146), *Callpod, Inc. v. T Technology, Inc., et al.*, Case No. 2:11-cv-326, Dkt. No. 150 (E.D. Tex. May 19, 2014) (granting joint motion to vacate final judgment) (Sacksteder Decl. Ex. C); *Geoffrion v. Nationstar Mortg. LLC*, No. 4:14-CV-00350-ALM, 2016 WL 6678492, at *1 (E.D. Tex. Oct. 26, 2016) (granting motion to vacate jury verdict and final judgment pursuant to settlement); Order, *Ameranth, Inc. v. Menusoft Systems Corp., et al.*, Case No. 2:07-cv-271-DF, Dkt. No. 332 (E.D. Tex. Oct. 31, 2011) (granting motion for indicative ruling that, upon remand from Federal Circuit, court would grant motion to vacate verdicts and judgment following settlement) (Sacksteder Decl. Ex. D); Order, *Ameranth, Inc. v. Menusoft Systems Corp., et al.*, Case No.

2:07-cv-271-RSP, Dkt. No. 355 (E.D. Tex. Feb. 6, 2012) (granting joint motion to vacate jury verdicts and Court's entry of judgment) (Sacksteder Decl. Ex. E).

When determining whether to grant vacatur, courts consider factors such as, "1. The public interest in the orderly operation of the federal judicial system; 2. The parties' desire to avoid any potential preclusive effect; 3. The court's resources that will be expended if the case continues; and 4. The parties' interest in conserving their resources." *Cisco Sys., Inc. v. Telcordia Techs., Inc.*, 590 F. Supp. 2d 828, 830 (E.D. Tex. 2008).

Here, several factors weigh in favor of vacatur. First, the Parties both "desire to avoid any potential preclusive effect" from the jury verdicts and final judgments, [REDACTED]

[REDACTED] See Order, *Optis Wireless Technology, LLC, et al. v. Huawei Device USA, Inc., et al.*, Case No. 2:17-cv-00123-JRG, Dkt. 417 (E.D. Tex. Feb. 27, 2020) (stating Court would give "favorable consideration" to joint request to vacate the final judgment and exceptional case order) (Sacksteder Decl. Ex. F); Order, *Optis Wireless Technology, LLC, et al. v. Huawei Device USA, Inc., et al.*, Case No. 2:17-cv-00123-JRG, Dkt. No. 422 (E.D. Tex. Apr. 2, 2020) (Sacksteder Decl. Ex. A); Order, *Intellectual Ventures I LLC v. T Mobile USA, Inc., et al.*, Case No. 2:17-cv-00577-JRG, Dkt. No. 372 (E.D. Tex. June 24, 2019) (Sacksteder Decl. Ex. B); Order Granting Joint Motion To Vacate Final Judgment (Dkt. No. 146), *Callpod, Inc. v. T Technology, Inc., et al.*, Case No. 2:11-cv-326, Dkt. No. 150 (E.D. Tex. May 19, 2014) (Sacksteder Decl. Ex. C).

Second, the "public interest in the orderly operation of the judicial system" would not be adversely affected by vacatur. The Parties' settlement disposes of all litigation pending before this Court concerning the patents at issue, and no third parties would be affected by vacatur of the verdicts and final judgments. Prior to the Parties' settlement, post-trial motions were pending

in Civil Action Nos. 2:19-cv-00070-JRG-RSP and 2:19-cv-00071-JRG-RSP, and the Parties had intended to file post-trial motions in Civil Action Nos. 2:19-cv-00237-JRG-RSP, 2:19-cv-00310-JRG-RSP, and 2:19-cv-00311-JRG-RSP. Because of the Parties' settlement, these pending and prospective post-trial motions (including motions addressing the impact on a verdict of a subsequent Federal Circuit decision regarding the asserted claim of a patent at issue in that verdict) will not be ruled on by the Court, and the record on the issues raised in those motions will remain incomplete. The jury verdicts and final judgments therefore will provide little guidance to the public because they were still subject to additional challenges and potential modifications on various grounds. *See IBM Credit Corp. v. United Home for Aged Hebrews*, 848 F. Supp. 495, 496 (S.D.N.Y. 1994) ("Vacatur of a decision is appropriate where it benefits the parties but does not run counter to any public interest.").

Third, the settlement significantly preserves the Court's resources. As a result of the settlement, the Court will not need to expend resources deciding the Parties' pending and prospective post-trial motions, and it will avoid expending resources on a trial in two remaining cases between the Parties (Civil Action Nos. 2:19-cv-00413-JRG-RSP and 2:20-cv-00113-JRG-RSP). Further, the settlement also resolves any potential future appeals, thereby preserving the resources of the judicial system, and [REDACTED]

[REDACTED]. *See Cisco*, 590 F. Supp. 2d at 831-832.

Fourth, the settlement has significantly preserved the Parties' resources. In addition to avoiding trial in two cases (Civil Action Nos. 2:19-cv-00413-JRG-RSP and 2:20-cv-00113-JRG-RSP), the Parties will not incur future expenses on their pending and prospective post-trial motions, or the potential expense of appeals. The settlement also resolves the related challenges to GREE's patents before the Patent Trial and Appeals Board filed by Supercell. The "parties'

interest in conserving their resources” therefore weighs in favor of vacatur. *See Cisco*, 590 F. Supp. 2d at 832. Accordingly, the Parties respectfully request that the Court vacate the Jury Verdicts and Final Judgments in the above-captioned cases.

Further, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), Plaintiff agrees to dismiss its claims in the above-referenced actions with prejudice, and Defendant agrees to dismiss its claims, counterclaims and defenses in the above-referenced actions without prejudice, with each Party to bear its own fees and costs.

NOW THEREFORE, subject to the approval of the Court, the Parties hereby move and stipulate as follows:

1. The Parties move that (i) the Jury Verdict (Dkt. Nos. 475 and 476) and Final Judgment (Dkt. No. 497) in Civil Action No. 2:19-cv-00070-JRG-RSP, (ii) the Jury Verdict (Dkt. Nos. 350 and 351) and Final Judgment (Dkt. No. 373) in Civil Action No. 2:19-cv-00071-JRG-RSP, (iii) the Jury Verdict (Dkt. Nos. 264 and 265) entered in Civil Action No. 2:19-cv-00237-JRG-RSP, (iv) the Jury Verdict (Dkt. Nos. 274 and 275) entered in Civil Action No. 2:19-cv-00310-JRG-RSP, and (v) the Jury Verdict (Dkt. No. 257 and 258) entered in Civil Action No. 2:19-cv-00311-JRG-RSP, be hereby vacated;
2. Plaintiff GREE, Inc. hereby dismisses the above-referenced actions with prejudice;
3. Defendant Supercell Oy hereby dismisses all claims, counterclaims and defenses in the above-referenced actions without prejudice; and
4. Each Party agrees to bear its own costs and expenses in the above-referenced actions.

Dated: August 23, 2021

Respectfully submitted,

GILLAM & SMITH, LLP

By /s/ Steven D. Moore

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2021, all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3).

/s/ Steven D. Moore
Steven D. Moore

CERTIFICATE OF CONFERENCE

I hereby certify that Counsel for Plaintiff and Counsel for Defendant have complied with the meet and confer requirement in Local Rule CV-7(h) regarding this Motion. The Parties are in agreement and are seeking joint relief.

/s/ Steven D. Moore
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